



POLICE DEPARTMENT

October 27, 2015

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Jared Hospedales
Tax Registry No. 936782
Patrol Borough Queens South
Disciplinary Case No. 2014-12024

The above-named member of the Department appeared before me on April 22, 2015, and July 8, 2015, charged with the following:

1. Said Sergeant Jared Hospedales, on or about May 15, 2013, at approximately 0110 hours, while assigned to Patrol Borough Queens South and on duty in the vicinity of 110-52 Farmers Boulevard, Queens County, used excessive force in that he unnecessarily used pepper spray against Stefon Luckey.

P.G. 203-11, Page 1, Paragraph 2 – USE OF FORCE

2. Said Sergeant Jared Hospedales, on or about May 15, 2013, at approximately 0110 hours, while assigned to Patrol Borough Queens South and on duty in the vicinity of 110-52 Farmers Boulevard, Queens County, used excessive force in that he unnecessarily used pepper spray against Stefon Luckey.

P.G. 212-95, Page 1, Paragraph 1 – USE OF PEPPER SPRAY

The Civilian Complaint Review Board (CCRB) was represented by Suzanne O'Hare, Esq. Respondent was represented by John D'Alessandro, Esq.

Respondent pleaded not guilty to the charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty of Specification No. 2. It is recommended that Specification No. 1 be Dismissed.

SUMMARY OF THE EVIDENCE PRESENTED

At about 1:10 a.m. on May 15, 2013, Stefon Luckey (Luckey) and his brother Person A drove in separate cars to a food store at 110-52 Farmers Boulevard, Queens (the store). When the two cars arrived at the store, Luckey exited his car and walked over to Person A's car. Luckey was standing next to the driver's door talking to his brother when Police Officer Lane Clark and his partner approached Person A's car. Clark had been observing Person A as he drove to the store and he suspected that Person A was intoxicated. Clark called for backup and Respondent arrived at the scene. Respondent determined that Luckey was interfering in the car stop and that he be arrested for obstructing governmental administration (OGA). Luckey entered the store and Respondent, Clark, and other officers followed him into the store. Respondent used pepper spray more than once against Luckey inside the store.

The CCRB Administrative prosecutor asserted that Respondent's use of pepper spray against Luckey constituted excessive force because it was unnecessary and because it violated the Patrol Guide Procedure regarding the proper use of pepper spray.

Respondent contended that his use of pepper spray against Luckey was justified and was consistent with the Patrol Guide's provisions regarding the use of pepper spray.

Luckey, who is 6 feet 4 inches tall, weighs over 300 pounds, and is employed as a driver for an ambulance company, testified that he drank two shots of Hennessy before

he

drove to the store. While the officers spoke with Person A, Luckey did not say anything to them and stepped away. After Person A supplied the requested documents and the officers returned to their RMP, Luckey walked back over to Person A's car. Respondent then appeared, ran toward Luckey, and told him, "Get the fuck across the street."

Luckey asked Respondent why he was screaming and cursing at him since he was just trying to find out what was going on with his brother. Respondent told him, "Get the fuck across the street before you get locked up." Luckey then walked into the store.

When he turned around, he saw that Respondent was right behind him. Respondent told him that he was under arrest. When Luckey asked what he was being arrested for, Respondent merely repeated that he was under arrest and instructed Luckey to put his hands behind his back. Luckey repeatedly asked Respondent why he was being arrested but Respondent only repeated the instruction that Luckey put his hands behind his back. Luckey admitted that he did not comply with this instruction. Respondent tried to grab Luckey's left arm. Luckey backed up and pulled away.

Respondent discharged his pepper spray at Luckey's eyes. Luckey felt a burning sensation and could not see. He had trouble breathing and started walking around in circles. There were other officers in the store and Luckey heard laughter. Respondent sprayed Luckey a couple more times. Luckey started screaming. Respondent called him a "cry baby," called him "the n word," and sprayed him again. Respondent told him to put his hands behind his back, and this time Luckey was compliant.

On cross-examination, Luckey testified that although he was not happy that the police had stopped his brother, he did not yell at the officers. He agreed that the officers repeatedly told him to put his hands behind his back and that he told them that he was not

going to allow them to arrest him. He denied making any aggressive moves at the officers. After he was pepper sprayed, he could not see and was just walking around. He continued to flail around even after an officer attempted to handcuff him. At one point, Respondent held the pepper spray up to his face and told him, "Stop or I'm going to spray you again." Luckey ultimately pleaded guilty to a charge of disorderly conduct. Luckey explained that when he raised his hand it was not his intention to attack a police officer. His hand was raised because he could not see or breathe.

Cassandra Fendley, the lead CCRB investigator, asserted that with regard to Respondent's pepper spraying of Luckey, "the first spray and all the sprays thereafter were against the Patrol Guide procedure."

Police Officer Lane Clark testified that during the car stop of Person A, Luckey approached the officers and gestured as if he was going to attack them. Clark and the other officers told Luckey multiple times to step aside so that they could deal with Person A. Luckey continued to approach them and thrust his chest out as if he was going to strike or push the officers. Luckey at one point stated "that this is his neighborhood and he doesn't need white cops around and he was going to be murdering us." He then put his hands on Clark and Respondent "in a pushing manner." The officers informed Luckey that he was under arrest. Luckey ran into the store and the officers followed. Luckey ran to the back of the store and raised his hands up. Each time that an officer grabbed Luckey's hands, Luckey pulled them away and stated that he was not going to get arrested. Because Luckey was struggling, Respondent pepper sprayed Luckey.

The pepper spray filled the narrow space. Clark was coughing. He walked in and out of the store to get fresh air. Luckey still refused to give the officers his hands. Luckey pushed and shook off Clark and his partner. They were ultimately able to handcuff him.

On cross-examination, Clark testified that they were in the process of administering a breathalyzer test to Person A when Luckey approached. Luckey stepped back only after the officers informed him that he was under arrest. Luckey stated, "I'm going in the bodega where there are cameras." Luckey was being arrested for interfering with governmental administration. Luckey was loud and irate as he pulled his hands away and refused to be arrested. Luckey had not been frisked, and it was possible that he was armed with a weapon. Clark confirmed that pepper spray should not be used when someone is passively resisting.

Respondent testified that when Clark called for backup he mentioned that he was having "a little problem with his brother." Upon his arrival at the scene, Respondent observed Luckey bent over Person A's car door. Luckey stood up, put his chest out, and came toward Respondent in a threatening manner. Respondent told Luckey, "Sir, please, we need to conduct a car stop. Can you please step off to the side so we can conduct a car stop?" Luckey started cursing and ranting, telling the officers, "I'm going to kill you guys; you guys are racist." After being asked at least eight times to get on the sidewalk, Luckey obliged. When Clark and his partner started dealing with Person A, however, Luckey ran off the sidewalk toward the officers. Respondent told him, "We gave you numerous chances. I'm going to place you under arrest. Please put your hands behind your back."

When Respondent went to grab Luckey's left wrist, Luckey flung him off. Respondent hit a wall. Luckey stated, "I want this on tape," before running into the store. Respondent followed, repeating to Luckey that he was under arrest and needed to put his hands behind his back. Luckey replied, "Fuck you, I'm not being arrested tonight. Why are you guys arresting me?" When Respondent attempted to grab Luckey's arm again, Luckey shoved him off "like a rag doll." It was at that point that Respondent decided to use pepper spray in order to gain Luckey's compliance. Respondent discharged a burst of pepper spray, but Luckey still did not comply with orders to place his hands behind his back. At one point Luckey was leaning over an ATM machine and Respondent believed he might be retrieving a weapon. Respondent discharged a second burst of pepper spray, and the officers were able to get one handcuff on Luckey. Luckey raised his hand, and it was only after Respondent threatened to spray a third time that the officers were able to successfully complete the handcuffing process. Respondent explained that pepper spray is very low on the force continuum. While the Patrol Guide suggests that pepper spray be discharged in one-second bursts from a distance of three feet, Respondent explained that in real-life arrest situations with noncompliant perpetrators things are not going to be perfect.

On cross-examination, Respondent testified that outside the store Luckey ran toward the officers in a threatening manner "like he was going to either hurt us or knock us down to the ground." Respondent admitted that he had sprayed Luckey from a distance of less than three feet. The first time he discharged the pepper spray he used one burst; the second discharge was two bursts. Respondent did not attempt to handcuff Luckey immediately after the first discharge because the pepper spray was affecting

Respondent's eyes. Because everything happened so fast, it was possible that at one point he may have inadvertently sprayed the back of Luckey's head. He described the area of the discharge as a confined space with the dimensions of a "decent sized closet." On redirect examination, Respondent explained that given Luckey's size and strength, he chose to use pepper spray because "there was no way [he] was going to physically grab Mr. Luckey and place his hands behind his back. There's no way I could have done it."

The video recording produced by surveillance cameras inside the store [CCRBX 1] will be discussed in the Findings and Analysis section.

FINDINGS AND ANALYSIS

Specification No. 2

Respondent is charged with having violated Patrol Guide Procedure No. 212-95, *Use of Pepper Spray Devices*, in that he "unnecessarily used pepper spray against Stefon Luckey."

Patrol Guide Procedure No. 212-95 establishes standards regarding both when-to-use pepper spray and how-to-use pepper spray. The how-to-use procedure states that "when necessary to use a pepper spray device," the UMOS should spray "using two one second bursts, at a minimum distance of three feet." Respondent admitted that he did not follow this procedure when he initially sprayed Luckey and when he subsequently sprayed Luckey while he was bent over an ATM machine. Respondent admitted that he initially sprayed Luckey using one burst at a distance of less than three feet from Luckey's face. Respondent also admitted that, as the video evidence shows, later when Luckey was bent over an ATM machine, he placed the pepper spraying device directly in

front of and close to Luckey's face and then "pepper sprayed him twice at the ATM." (Tr. p. 167)

However, since the charge alleges that Respondent "unnecessarily" used pepper spray against Luckey, it is the when-to-use pepper spray standards, not the how-to-use standards, that must be examined to determine whether Respondent's use of pepper spray was unnecessary.

Patrol Guide Procedure No. 212-95 states that "pepper spray may be used when a member reasonably believes it is necessary to effect an arrest of a resisting suspect" and "pepper spray may be used in arrest or custodial restraint situations where physical presence and/or verbal commands have not been, or would not be, effective in overcoming physical resistance." Luckey admitted that after he entered the store, he turned around and saw Respondent who told him that he was under arrest and to put his hands behind his back. Luckey corroborated Respondent's claim that he refused to comply with Respondent's order that he put his hands behind his back. Even if I credited Luckey's claims that he was correct in believing that he had done nothing that warranted his being arrested and that Respondent would not tell him why he was being arrested, Luckey had no right to refuse to comply with Respondent's order that he put his hands behind his back.

Moreover, the video evidence shows that Luckey physically prevented Respondent from effecting his arrest¹ before Respondent initially used pepper spray against him. The video depicts, and Luckey admitted, that after Respondent tried to grab Luckey's hand, Luckey physically resisted Respondent's attempt to place him in custody by shoving Respondent, pulling his arm out of his grasp and backing away from him.

¹ See Penal Law section 205.30 Resisting Arrest.

Thus, I find that Respondent's initial use of pepper spray against Luckey was not shown to have violated the when-to-use standards established by Patrol Guide Procedure No. 212-95, because the Administrative Prosecutor did not meet her burden of proving that, under the circumstances Respondent was presented with here, it was unreasonable for Respondent to believe that it was necessary to use pepper spray to effect the arrest of a physically resisting suspect who was 6'4" tall and weighed over 300 pounds.

However, the video evidence establishes that Respondent's subsequent use of pepper spray against Luckey directly violated an important provision of Patrol Guide Procedure No. 212-95. Although the purpose of using pepper spray against "a subject resisting arrest" is to "effect an arrest, or establish physical control" over the subject, Respondent testified that because his initial spray at Luckey's eyes got into his own eyes as well, he was "incapacitated" and he had to run to the front of the store and the officers under his supervision who had entered the store had to back out of the store. (Tr. p. 161) Thus, neither he nor any of the officers under his supervision immediately moved to establish physical control over Luckey after Respondent's initial spray. Rather, they left Luckey alone inside the store.

The video then depicts Luckey stumbling blindly down an aisle rubbing his eyes with his hands. Luckey then stops walking and is seen bending forward and slapping his hand on what was later determined to be an ATM machine. He then stops slapping and is seen standing still, bent over with his head resting on top of his arm. The video then shows Respondent discharging pepper spray directly into Luckey's eyes at close range.

Respondent's action of pepper spraying Luckey at the ATM machine violated the provision of Patrol Guide Procedure No. 212-95 which states: "Do not use pepper spray

on subjects who passively resist (e.g., going limp, offering no active physical resistance)."² The fact that "not" is underlined in this provision shows that the Department intended to emphasize the importance and significance of this prohibition. Since the video shows that Luckey was not offering any active physical resistance when Respondent pepper sprayed him while he was bent over the ATM machine, Respondent's action violated this prohibition. Finally, I reject Respondent's claim that he was concerned that Luckey might reach for a weapon because this claim is inconsistent with Respondent's action of leaving Luckey alone inside the store after Respondent's initial spray.

Therefore, Respondent is found Guilty of Specification No. 2.

Specification No. 1

The wording of Specification No. 1 is identical to the wording of Specification No. 2. That Specification No. 1 cites to a different section of the Patrol Guide than is cited to in Specification No. 2 does not change the fact that these two Specifications are duplicative because they charge the exact same substantive misconduct.

Therefore, it is recommended that Specification No. 1 be Dismissed.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 10, 2005. Information from his personnel

² Patrol Guide Procedure No. 212-95, NOTE, p. 2 at top of page.

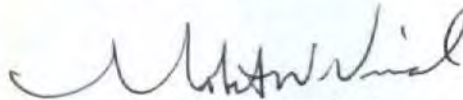
record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The CCRB Administrative Prosecutor recommended that Respondent forfeit ten vacation days as a penalty. This recommendation was based on CCRB's position that Respondent was guilty of both of the Specifications CCRB charged him with, and based on CCRB's position that each and every spray of pepper spray Respondent directed at Luckey was unnecessary. Since I have found Respondent Guilty of only one of the two charges brought against him, and since I have found that only one of Respondent's sprays of pepper spray was unnecessary, a substantially lesser penalty is warranted here.

In determining a penalty recommendation, I have also taken into consideration that Respondent is a ten-year member of the Department who has no formal disciplinary record and no monitoring records, and who has received consistently good performance evaluations.

Therefore, it is recommended that Respondent forfeit two vacation days as a penalty.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner – Trials

APPROVED

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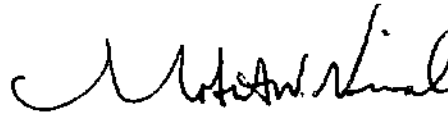
WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
SERGEANT JARED HOSPEDALES
TAX REGISTRY NO. 936782
DISCIPLINARY CASE NO. 2014-12024

Respondent received an overall rating of 4.0 on his 2014 annual performance evaluation, 4.0 on his 2013 annual evaluation, and 4.0 on his 2012 evaluation. He has no medals. [REDACTED]
[REDACTED] He has no prior formal disciplinary record and no monitoring records.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner - Trials